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SUMMARY RECORD OF THE 1143rd MEETING

Held at Headquarters, New York,
on Tuesday, 7 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Belgium (continued) (CCPR/C/57/Add.3)

1. At the invitation of the Chairman, Mr. Debrulle (Belgium) took a place at the Committee table.

2. The CHAIRMAN invited Mr. Debrulle to answer questions held over from sections I and II of the list of issues.

3. Mr. DEBRULLE (Belgium) said, referring to the "Lamy case", that the individual concerned was still in Belgium, and that the decision to refuse asylum had been suspended by order of the Council of State. The matter had not, as yet, been addressed in depth, however, and a final decision was still pending.

4. In answer to Mr. Mullerson, Dutch speakers represented an overall linguistic majority of 5.7 million as compared to 4 million French speakers. Measures of protection had been established for the French minority community, as a result. In the Brussels-Copital region, however, the majority of the population was French-speaking with about 15 per cent of the population living in a Dutch-speaking enclave. Some measures had none the less been taken to protect the use of the Dutch language because of imperialist tendencies perceived in the use of French.

5. Article 56 bis of the Consitution allowed the three communities to conclude treaties independently in areas of their own competence, for example, concerning cultural exchange or education. The question of whether economic and social regions had similar competence was currently under debate within the European Economic Community, since the association agreement had recognized only Member States, and not regions or communities.

6. For purposes of ensuring linguistic parity between judges, for instance, the decision regarding which linguistic group an individual came under was based on the language in which the individual had earned his or her diploma.

7. Mr. Wennergren had noted that some Constitutional provisions were no longer applied because of the communitarization and regionalization process. Most of those provisions dated back to 1831, and did not reflect the evolution which had taken place in concepts such as "the nation". It had become apparent over time that several "nations" existed within the Belgian State, for example.

8. Concerning the obligation of relative discretion imposed on aliens, he said that the purpose of that obligation, which prohibited aliens from engaging in activities detrimental to relations between Belgium and their home country, was to maintain good relations with other countries.

Right to life, liberty and security of the person, and treatment of prisoners and other detainees (articles 6, 7, 8, 9 and 10 of the Covenant) (section III of the list of issues)

Freedom of movement and expulsion of aliens (arts. 12 and 13 of the Covenant) (sect. IV of the list of issues)

9. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Belgium, namely: (a) the current situation in respect of abolition of the death penalty and ratification of the Second Optional Protocol; (b) rules and regulations governing the use of firearms by the police and security forces, violations of those rules, if any, and measures taken to prevent their recurrence; (c) futher information on the Protection of Young Persons Act of 8 April 1965; (d) information on detention in institutions other than prisons and for reasons other than crimes; (e) maximum length of pre-trial detention; (f) remedies available to persons claiming wrongful detention and effectiveness thereof; (g) time-limit for informing an individual's lawyer or family after arrest; (h) complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees, if any, and convictions on such charges and remedies provided; (i) procedures established for the regular review of prison conditions; and (j) compliance with United Nations Standard Minimum Rules for the Treatment of Prisoners, and availability of relevent regulations and directives to prisoners in all official languages.

10. He then read out section IV of the list of issues, namely: (a) information on the status of the Royal Decree of 7 May 1985 and of the appeal lodged against it; (b) whether an appeal against an expulsion order had suspensive effect; and (c) information on the condition and status of persons received at Centre 127 at Zaventem airport.

11. Mr. DEBRULLE (Belgium), referring to section III (a), said that a bill had been reintroduced before the legislature expressly abolishing the death penalty, except in time of war for the most serious military crimes, echoing the language of article 2 of the Second Optional Protocol. The military criminal code had also been amended to maintain the death penalty only for the most serious offences in time of war. The Ministry of Justice was in the process of drafting a law adopting the Second Optional Protocol of the Covenant and the sixth protocol to the European Convention on Human Rights, since domestic legislation must be amended in order to permit their ratification.

12. Turning to section III (b), he said that the use of firearms by police and security forces was governed by the law of 2 December 1957 on the police force and by article 257 of the criminal code. The criteria for their legitimate use were that such use must be legal, absolutely necessary due to lack of another course of action, strictly limited to the extent necessary to carry out the mission, and appropriate, without posing a danger to a third party. Absolute necessity was the basic principle governing any use of firearms.

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13. The principle of self-defence based on article 416 of the criminal code required, in addition to absolute necessity, that conditions of serious aggression, present or imminent aggression and defence appropriate to the type and seriousness of the aggression must be met. The principle of lawful protection allowed recourse to arms in the protection of persons or property by the police if no other means of defence was possible. Use of arms to disperse hostile crowds and for purposes of riot control could be ordered by the officer in charge of maintaining public order or, in an emergency, the ranking officer present or the administrative authority, if they deemed it necessary and had already attempted less severe measures, including the use of force. In such a case, the public must be so informed according to a formalized procedure.

14. A bill had been introduced before the legislature in June 1991 to coordinate the functions of the various police forces and to reform the above-mentioned laws by providing uniform regulations on the use of firearms. It dealt with the use of force and the use of firearms. The use of force must follow the principles of legality, proportionality and timeliness. The police had a duty to seek the least violent form of intervention possible before resorting to the use of firearms. Firearms could be used only in cases of absolute necessity but, under the bill, that was understood to include the supposition of serious crime, such as violent offences, and cases where the police could reasonably suspect that an individual was in possession of a firearm and intended to use it.

15. There had been 104 instances of use of firearms by the police in 1989, 83 in 1990, and 75 in 1991, resulting in 9 disciplinary actions in 1989, 12 in 1990 and 5 in 1991. The police force numbered some 15,000 officers.

16. With regard to section III (c), both the Dutch and French communities had recently issued decrees abrogating article 53 of the Protection of Young Persons Act of 1965, stipulating that it could be applied only to minors charged with delinquency. A bill had been drawn up outlining the proposed changes. They included restriction of the Act to minors over 14 years of age charged with committing an act punishable by one year in a correctional institution, reduction of the time allowed for filing an appeal and for rendering an appeal decision, provision of legal assistance and the stipulation that the measure could be applied only once during the same procedure. The bill also contained several changes in procedural guarantees. A lawyer would be assigned to protect the interests of the young person immediately upon referral to the juvenile court. The minor must be heard by the judge before any measure could be taken, whether interim or final, and grounds for an interim measure must be given. The parties and their counsel would have access to the case file during the preparatory period, which would be limited to three months. Appeals must be heard within 15 days.

17. Referring to section III (d), he said that a new law on the protection of the mentally ill made it impossible for a person to be held for observation or

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hospitalized without a judicial decision rendered following a hearing in which the patients right to defend himself was fully guaranteed. The new law was based on the principle that freedom should be the rule and its restriction the exception. Any decision to place an individual under observation either in his home or in a hospital, or to continue hospitalization, must be taken by a justice of the peace, and the individual must be assisted by a lawyer and, if desired, by a psychiatrist. Decisions in such cases could not be opposed, but could be appealed before a panel of three judges. The law guaranteed to any mentally ill person the respect of his basic human rights.

18. In answer to section III (e), he said that the new Act on pre-trial detention of 2 July 1990 was intended to guarantee the individual's basic rights, while at the same time improving the administration of justice. By raising from six months to one year the minimum sentence where pre-trial detention was warranted, eliminating mandatory detention for certain types of crimes and instituting criteria for pre-trial detention based on absolute necessity for reasons of public safety, it emphasized the exceptional nature of the measure. Guarantees of individual rights had been improved through rigorous definition of conditions of arrest, more detailed arrest and hearing records, the provision to individuals held in pre-trial detention of full copies of warrants and records of police questioning, free access to a lawyer even for a suspect held incommunicado, the right to see files before the first appearance before a judge, a review of the proceedings before any subsequent appearances, and the right to a public hearing after six months to a year of detention. Alternatives to pre-trial detention had also been provided.

19. However, no definite time-limit had been established for pre-trial detention. The legislature believed that the new Act contained adequate guarantees to reduce the use of that practice to a minimum. Furthermore, article 5.3 of the European Convention on Human Rights applied fully in such cases.

20. With regard to compensation for wrongful detention, mentioned in section III (f), paragraphs 111 to 114 of the report discussed the matter in detail. About 60 cases a year were brought before the Minister of Justice, and the number was growing. Compensation was awarded in about half of those cases, and about one third of the decisions were appealed.

21. In answer to section III (g), a detainee could contact his family in writing or by telephone immediately following arrest, unless he was being held incommunicado. Even then, he could contact his lawyer. There was no set procedure requiring a detainee's family or lawyer to be informed of his arrest; the initiative had to come from the detainee himself.

22. Referring to section III (h), he said that no complaints of torture had been received during the reporting period, but some complaints of ill-treatment had been made with regard to maximum security prisons and solitary confinement. The complainants had maintained that such isolation

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measures were seriously detrimental to their health. The State had justified those measures on the grounds that directors of prisons had the right to take such restrictive measures as circumstances and prudence required, and that Council of Europe draft recommendations required separation of dangerous prisoners. The resulting court decisions had agreed with the State that magistrates could not rule on the appropriateness of measures taken in response to individual circumstances, but only on the legality of the measures, considering the reasons for detention. The practice had been criticized, however, since maximum security or solitary confinement should be viewed as an exception to the ordinary prison regime, to which all prisoners had the basic right. The matter was currently before the court of appeal, and a final decision was still pending.

23. Referring to section III (i), he said that detainees could appeal to the authorities of the penitentiary system, beginning with the Director of Prisons and, if necessary, going as far as the Minister of Justice. Appeal was also possible to the prison administration, notably the Administrative Commission and the authority referred to as the Commissioner of the Month. A third recourse procedure was to courts with summary jurisdiction. In addition to those remedies, periodic visits to prisons by a monitoring committee were currently possible following the recent ratification by Belgium of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

24. Concerning section III (j), he said that on the whole, the United Nations Standard Minimum Rules for the Treatment of Prisoners were respected. They were readily available in French and in Dutch to all persons within the penitentiary system.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section IV of the list of issues)

25. The CHAIRMAN read out section IV of the list of issues, namely: (a) information on the status of the Royal Decree of 7 May 1985 and of the appeal lodged against it (para. 145 of the report); (b) whether an appeal against an expulsion order had suspensive effect; and (c) information on the conditions and status of persons received at Centre 127 (Reception Centre) at Zaventem airport.

26. Mr. DEBRULLE (Belgium) said that he had already addressed section IV (a) in a previous reply. Concerning section IV (b), he pointed out that there were several categories of expulsion depending on the status of the alien in question. The successive recourses available were appeals to the Minister of Justice for review of the expulsion order; appeals to the Commissioner-General for Refugees and Stateless Persons; recourse to the presiding judge of the court of first instance; recourse to a Standing Commission established to hear such appeals; and, finally, recourse to the Council of State. All remedies had suspensive effect in respect of the order of expulsion and were based on

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the provisions of the European Convention of Human Rights and the International Covenant on Civil and Political Rights that persons in such situations must have effective remedies.

27. New rules governing the expulsion of aliens had recently been introduced. They followed the jurisprudence established by the European Court of Justice that the imprisonment and subsequent expulsion of aliens convicted of serious crimes constituted double jeopardy, and also contained provisions against the separation of families.

28. Referring to section IV (c), he said that the Decree of 14 July 1987 provided that asylum-seekers without valid travel documents were no longer authorized to enter Belgium as of right. Such persons were confined to the transit zone at Zaventem airport known as Centre 127 while their requests were being processed. The Belgian courts had found that such confinement did not constitute administrative or penal detention, since the aliens in question could leave for a destination abroad at any time they wished. On the other hand, the Committee against Torture of the Council of Europe had expressed the opinion that the transit zones were detention areas since aliens were, for the most part, destitute and therefore unable to exercise the right to depart for a foreign destination. However, the Court of Appeal had recently reaffirmed that such confinement for periods of under two months did not constitute administrative or penal detention within the meaning of the Act of 15 December 1980.

29. Mr. SADI asked what the Government was doing to address the affirmative dimensions of the right to life, such as the right to health, the elimination of epidemics, and pollution-related issues.

30. Miss CHANET sought clarification of the rules under which a detainee was required to be brought before a judge within a certain period of time, the manner in which monthly monitoring of provisional detention was carried out and whether detainees had the right to ask for a lawyer as soon as they were arrested. She also wondered whether medical examinations were carried out by independent doctors. Finally, she would welcome further information on the practice of solitary confinement of detainees.

31. On the matter of persons held in transit zones, article 9 (4) of the Covenant provided that they should have the right of appeal against what was, in fact, detention. It was unrealistic to say that they could leave for their own countries at any time.

32. Mr. WENNERGREN wished to know the position of Belgian law on the matter of organ transplants from aborted foetuses.

33. Mr. DEBRULLE (Belgium), replying to Mr. Sadi, said that Western societies had traditionally distinguished between civil and political rights on the one hand and social and economic rights, on the other. He cited a case which had

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been brought before the European Court of Human Rights on behalf of certain Belgian families who claimed that denial of electricity - their electricity had been cut off because they had not paid their bills - constituted inhuman and degrading treatment, and said that the Court had declined to hear the case.

34. Belgium had adopted the more restrictive interpretation of the right to life. However, every effort was being made to protect people's health, provide preventive treatment of the acquired immune deficiency syndrome (AIDS) and to protect the so-called third generation of human rights, such as the right to a healthy environment.

35. The rules governing the conditions of preventive detention had recently been changed and it would take some time before the results of the new provisions could be evaluated. In general terms, a Chamber of Council was required to determine, within five days of a person's detention, whether the grounds for detention still existed. Detainees also had remedies of appeal at each phase of their detention; and he had the right to request that a lawyer be present. The affiliation of doctors who performed medical examinations with the penitentiary establishments had been criticized and corrective steps were being taken.

36. Solitary confinement was intended to isolate a detainee. During that period he was allowed contact only with his lawyer. Finally, individuals held in transit zones could have recourse to the remedies available to them at any time during their confinement.

37. He did not have information concerning organ transplants from aborted foetuses, but would obtain it and make it available to the Committee.

Right to a fair trial (article 14 of the Covenant) (section V of the list of issues)

38. The CHAIRMAN read out section V of the list of issues, namely:
(a) procedures for the appointment and removal of members of the judiciary;
(b) information on the organization and functioning of the Belgian Bar and on the availability of legal assistance to criminal defendants; and
(c) clarification of the legal aid system in Belgium.

39. Mr. DEBRULLE (Belgium), referring to section V (a), said that appointments were usually made by the King based on two lists drawn up by an elected body and by the competent branch of the judiciary respectively. Judges were appointed for life and could be removed only with their own consent or by decision of the Court of Appeals.

40. Turning to section V (b), he explained that the legal profession was independent and private in Belgium. Attorneys must be Belgians or nationals of a member State of the European Economic Community. They must possess a law degree from a Belgian university, take an oath and be a member of the Bar.

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Attorneys could not simultaneously act as judges or notaries, could not engage in business or industry and could not be involved in publicly or privately remunerated activities. A Council was elected annually by each Bar Association to administer the Association and to ensure that its traditions were maintained. A similar Council functioned at the national level, whose main purpose was to safeguard the professional interests of attorneys.

41. Concerning section V (c), indigents could ask that an attorney be appointed to defend them. Because of the low pay such work, however, was usually entrusted to trainee attorneys. The Government proposed to provide other means of assistance through social assistance committees and the payment of subsidies to attorneys who did pro bono work for indigent clients.

42. Turning to section VI (a), he said that, as a general principle, preventive action to restrict freedom of expression was not permissible under Belgian law. However, a posteriori judicial proceedings could be taken under the civil or legal codes to redress damage to a person's honour or good name and to punish incitement to criminal conduct or acts based on racism or xenophobia.

43. Article 18 of the Constitution expressly prohibited censorship of the press, a term that was being broadened to cover all modern media of communication. Recently, however, there had been a spate of petitions to interim relief judges for prevention of the publication or broadcasting of material viewed as damaging to natural or juridical persons. There were differences of opinion regarding the applicability of the constitutional ban on censorship to the judiciary. There were two schools of thought. According to the first, the prohibition did not apply to magistrates. The purpose of the constitutional provision was to afford protection against intervention by the executive or legislative branches, whereas the judiciary was the traditional protector of civil liberties. The second school of thought denied the existence of any such derogation on behalf of the judiciary. Legal precedent seemed to favour a middle position. Magistrates tended to exercise great caution, seeking to strike a balance between all interests involved and bearing in mind the pre-eminence of freedom of expression. In practice, petitions were granted only where the rights of a third party had been manifestly violated.

44. Referring to section VI (b) of the list of issues, he said that article 35 of the Act of 3 July 1978 concerning employment contracts defined "serious reasons" as any serious transgression that immediately and definitively rendered future collaboration between the employer and employee impossible.

45. Trade-union and staff representatives were protected against dismissal for reasons related to their status as office-holders by Collective Labour Agreement No. 5 of 24 May 1971 and the Act of 19 March 1991 respectively. The conduct of employees thus protected was to be judged in the same way as that

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of their colleagues and the "serious reasons" could not be linked to the existence or discharge of official duties as trade union or staff representatives. However, prior to the Act of 19 March 1991 a distinction had been drawn in practice between the normal discharge of official duties and abuses perpetrated in the exercise of such duties.

46. Turning to section VII (a) of the list of issues, he said that the custody of children in the event of separation or divorce was awarded either on the basis of agreement between the parents or on the basis of a judicial decision. Decisions regarding custody could be reviewed by a juvenile magistrate at the request of any person vested with parental authority or pursuant to a submission by the Public Prosecutor's Office if the interests of the child so required.

47. The criteria which the courts took into account in the event that both parents requested custody, were availability of the parent, age (mothers being generally awarded custody of infants) and, above all, the best interest of the child, bearing in mind, from a certain age onwards, the child's own preference.

48. Although parents tended to favour joint custody (where the child stayed alternately with one parent and with the other) judicial precedents were divided. Those who opposed it argued that while physical custody could be shared, under Belgian law legal custody could not. That argument was not an obstacle to joint custody, provided that a distinction was drawn between physical custody and legal custody.

49. When custody was awarded to one parent, the other retained the right to maintain personal relations with the child, including the right to monitor his or her upbringing and education.

50. All such rights were subject to judicial control if the child's physical or mental health were considered to be in jeopardy.

51. With regard to section VII (b) of the list of issues, he said that Convention No. 138 on the minimum working age prohibited the employment of children who had not completed their compulsory schooling save in areas related to their education and training.

52. Underground work in the mining industry, physically taxing work and activities that might jeopardize the health or pose a threat to the morals of minors were also prohibited to young people under the age of 18. Young people were also protected by restrictions on night work, Sunday work and professional sports contracts.

53. Mr. SERRANO CALDERA, referring to the two schools of thought on the possibility of preventive judicial intervention to restrict freedom of expression, asked whether any legal action had been taken in that connection in the Constitutional Court or whether judgements had so far been based on mere interpretations of article 18 without constitutional status.

(Mr. Serrano Caldera)

54. With regard to trade union participation in the National Labour Council, he drew attention to a recommendation by the ILO Commission of Experts on the implementation of conventions and recommendations regarding Belgium's compliance with ILO International Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize. There had been some doubt concerning the access of professional associations to the National Labour Council. In particular, objective criteria had not been adopted to regulate access thereto and the National Confederation of Professional Personnel had not been allocated a seat on the Council. He wished to know what criteria of access were currently being applied, whether legislation existed to protect that right and what action had been taken to implement the ILO recommendation.

55. Mr. ANDO inquired whether the State had a monopoly on television broadcasting and who exercised control over the system.

56. Mr. WENNERGREN noted that article 19 of the Belgian Constitution concerning freedom of assembly contained restrictions with respect to outdoor meetings, which were subject to police laws. Moreover, Belgium's initial report had mentioned a circular issued on 7 October 1985 on the coordination of the maintenance of law and order at large gatherings. A question concerning restrictions on freedom of assembly had been asked on that occasion but no reply had yet been received. He was not sure whether Belgian law on peaceful assembly was compatible with article 21 of the Covenant but in view of the complexity of the legislation he felt that it might be desirable to postpone further consideration of the matter until the third periodic report.

57. Mr. NDIAYE asked whether the existence of a monarchy in Belgium had any implications for the principle of equal access to public office, for example in the form of privileged treatment for the aristocracy.

58. Mr. DEBRULLE (Belgium) said that he was not familiar with the ILO provisions referred to by Mr. Serrano Caldera but would look into the matter of possible incompatibility and would respond in writing. In general, the concept of trade union representation in Belgian law was a very broad one and hence the established criterion of national representation, which in turn raised the issue of possibly insufficient representation of professional personnel.

59. Belgium's own public channels in both Flemish and French were State-owned and operated; but it was not an absolute monopoly because there were several French and Flemish private channels also in operation. In theory, advertisements could not be broadcast on public channels, but those regulations were not observed.

60. His Government would carefully compare article 19 of the Constitution with article 22 of the Covenant and study the question of incompatibility.

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61. As to the issue of access to government employment, even though a few public functions were reserved to the royal family and a Senate seat was always reserved for the brother of the King, he did not believe that such royal privileges interfered in any way with full access by all citizens to public employment.

62. The CHAIRMAN invited members of the Committee to make general comments on the report.

63. Mr. ANDO expressed appreciation for the very detailed report supplemented by the annex on legislation passed in the interim and for the excellent replies, which the Committee had come to expect from the Belgian delegation. The human rights problems in Belgium were few, but he had three concerns. There was the relationship between the European Convention on Human Rights and the Covenant: while they often duplicated each other, article 14 of the Covenant was much more detailed and article 26 was unique, and both should have a place in Belgian law. Secondly, there was a jurisdictional problem between the national and the community Governments, with some national legislation being applied by the communities; all national legislation should be the responsibility of the central Government, which should ensure compliance by the communities. Lastly, the Government might want to reconsider its reservations to the Covenant, particularly those in respect of article 10 and article 14 (5), which seemed unnecessary.

64. Mr. NDIAYE, noting the excellence of the report and the competence and readiness of the delegation to answer questions, observed that the incompatibility of the obligation to vote with the freedom of conscience guaranteed by the Covenant, a view with which the Government took issue in paragraph 238 of the report, was not in fact a position of the Committee as a whole but only of some of its members. He himself, for instance, did not see that as an incompatibility. The report as a whole reflected the status of human rights in Belgium, and showed that it did not have problems on that score.

65. Mr. PRADO VALLEJO observed that the report was exemplary, and the clear and objective answers had made for a constructive dialogue. Two basic concerns remained, however. The Covenant could not be invoked or applied directly under Belgian law, a legal gap which was currently filled by judges who applied the law, but which should in future be remedied. Also, certain laws restricting the stay of immigrants, which had been adopted after the Covenant had entered into force and were incompatible with it since they discriminated against individuals on grounds of nationality, should be brought into line with the Covenant.

66. Mr. WENNERGREN said that he now had a better understanding of what was a very complicated legal system indeed, especially in the interaction between federal, community and constitutional legislation. The clear impression was that the Belgian system was largely in compliance with the Covenant. He hoped

(Mr. Wennergren)

that the next report would deal more fully with certain points, such as the discrimination against aliens just referred to, for which reasonable and objective grounds in the public interest might be adduced. His own country had arrived at a similar legal solution to that real problem. It was true that the Committee as a whole did not consider the obligation to vote as a violation of freedom of conscience, although he himself still considered it to be so. He had, on the other hand, been pleased to learn more about the freedom of assembly in Belgium and its compatibility with article 21 of the Covenant.

67. Mr. MAVROMMATIS observed that the kind of elaborate federalism developed in the Belgian system would probably provide an answer to the problem of fragmentation of countries, currently taking place, for instance, in Eastern Europe. While there seemed to be different degrees of protection in Belgium depending on where one lived, there was nevertheless a healthy, deeply rooted respect for human rights in the country. The very good report and the excellent answers left very little to be desired. With regard to paragraph 238 of the report, he said that voting was compulsory in his own country also and he did not believe Belgium should change its system.

68. Mr. HERNDL said that the excellent report and the ensuing discussion made it clear that Belgium respected human rights. The Committee could make a few recommendations, but there were no real problems. A very complex legal Community system governed the treatment of language groups, but it served Belgium's needs and was in compliance with article 27 of the Covenant. Since reservations, in principle, suggested incompatibility with the Covenant, he said that the time had perhaps come for Belgium to review its list of reservations; some of them had been overtaken by events and others had been prompted by an overscrupulous desire to avoid problems of incompatibility.

69. Mr. SERRANO CALDERA, praising the quality of the report and the written and especially oral answers, observed that Belgium had no real human rights problems. The dialogue had instead focused in depth on the constitutional and legal system and on the particularities of the country, especially the "centrifugal" trend from a central government to a federal structure and the bi-polarity of the two French and Flemish Communities.

70. He still had a few minor concerns, one of which related to the applicability of the Covenant and the two types of laws applying it either directly or indirectly. Also, Belgian legislation needed to be harmonized with the Covenant in a few instances. The lack of an overall judicial authority over preventive detention could lead to unequal treatment. Lastly, the Government should review its reservations to the Covenant.

71. Miss CHANET said that the situation in Belgium was particularly complex institutionally but that she believed human rights were safeguarded. She agreed that the Government should review its reservations to the Covenant and consider ratifying the Optional Protocol. Some other problems remained, such

(Miss Chanet)

as the weight of cultural bias against women, which was not unique to Belgium and which it had recognized. There was also the question of the situation of the many immigrants who sought to settle in Belgium and the Government should, particularly in view of a recent decree by the European Court of Human Rights, remedy any violations of their privacy.

72. She herself was not satisfied with the explanations given on the question of the direct application of laws and the obligatory recourse, as an intermediate step, to the courts for rulings on whether or not a law was self-executing. She did not see how the courts could settle all such problems because, in Belgium as in France, judges could not hand down conflict judgements. Consequently, the use of judicial authority as an intermediary did not seem to be in compliance with article 2 of the Covenant and was likely to create a legal loophole. Whenever there was a doubt as to whether a particular provision was self-executing, the Government should pass a law on the matter. That would be the logical conclusion of the Government's ongoing consideration of the issue.

73. With regard to police custody, admittedly a brief administrative phase of detention, it was none the less a period during which there was no access to counsel or to impartial doctors, which had given rise to certain incidents. Her impression, however, was that the law was evolving in that area. There was no question that Belgium was scrupulously endeavouring to respect the Covenant and basic human rights.

74. The CHAIRMAN said that, like the other members of the Committee, he was satisfied with the human rights situation in Belgium and also with regard to the primacy of the Covenant in Belgian law, which had been clarified in the oral replies. He was certain that the Government would study the Committee's comments and that its reaction would be reflected in the third periodic report, which was due in 1994.

75. Mr. DEBRULLE (Belgium) said that he would certainly report the various comments of the Committee to his Government and hoped that its next periodic report would show that it had fulfilled all the commitments the Committee expected of it.

The meeting rose at 6.10 p.m.